

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PABLO P. PIÑA,

Plaintiff,

v.

YSUSI, *et al.*,

Defendants.

Case No. 1:20-cv-01735-BAM (PC)

**ORDER TO SHOW CAUSE WHY CLAIMS
AGAINST DEFENDANT YSUSI SHOULD
NOT BE DISMISSED FOR FAILURE TO
PROSECUTE**

(ECF No. 58)

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Pablo P. Piña (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint against Defendant Ysusi for excessive force in violation of the Eighth Amendment and against Defendant J. Gonzales for retaliation in violation of the First Amendment. All parties have consented to Magistrate Judge jurisdiction. (ECF Nos. 36, 39.)

On November 29, 2022, Defendant Ysusi filed a motion for summary judgment on the grounds that Defendant Ysusi did not use excessive force against Plaintiff in violation of the Eighth Amendment and Defendant Ysusi is entitled to qualified immunity as to Plaintiff’s Eighth Amendment claim against him. (ECF No. 58.) In the motion, Plaintiff was provided with notice of the requirements for opposing a motion for summary judgment. *Woods v. Carey*, 684 F.3d 934 (9th Cir. 2012); *Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998); *Klinge v. Eikenberry*, 849

1 F.2d 409, 411–12 (9th Cir. 1988). (ECF No. 58-9.) Pursuant to Local Rule 230(l) and Federal
2 Rule of Civil Procedure 6(d), Plaintiff's opposition or statement of non-opposition was due on or
3 before December 23, 2022. The deadline for Plaintiff to respond to Defendant Ysusi's motion for
4 summary judgment has expired, and he has not otherwise been in contact with the Court.
5 Plaintiff will be permitted one final opportunity to show cause why his claims against Defendant
6 Ysusi should not be dismissed with prejudice.¹

7 Accordingly, it is HEREBY ORDERED that Plaintiff shall show cause by WRITTEN
8 RESPONSE within **twenty-one (21) days** of service of this order why his claims against
9 Defendant Ysusi should not be dismissed, with prejudice, for failure to prosecute. Plaintiff may
10 comply with the Court's order by filing an opposition or statement of non-opposition to
11 Defendant Ysusi's motion for summary judgment, (ECF No. 58). **Plaintiff is warned that if he**
12 **fails to comply with the Court's order, his claims against Defendant Ysusi will be dismissed,**
13 **with prejudice, for failure to prosecute.**

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15 IT IS SO ORDERED.

16 Dated: January 10, 2023

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE
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25 ¹ The Court notes that Defendant Gonzales filed a separate motion for partial summary judgment
26 on the ground that Plaintiff failed to exhaust available administrative remedies for his claims
27 against Defendant Gonzales. (ECF No. 41.) As Plaintiff timely opposed that motion and it
28 remains pending before the Court, at this time, Plaintiff's claims against Defendant Gonzales will
not be dismissed based on Plaintiff's failure to oppose the motion for summary judgment filed by
Defendant Ysusi.